

**EXAMINING COMPLIANCE PROCEDURES IN THE INVESTIGATION OF TENDER  
IRREGULARITIES**

by

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Submitted in accordance with the requirements  
for the degree of

**MAGISTER TECHNOLOGIAE**

in the subject

**FORENSIC INVESTIGATION**

at the

UNIVERSITY OF SOUTH AFRICA

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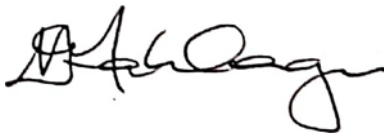
MAY 2019

## DECLARATION

I, Glenda Safedi Mahlangu, declare that “Examining compliance procedures in the investigation of tender irregularities” is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

I further declare that I submitted the dissertation to originality checking software and that it falls within the accepted requirements for originality.

I further declare that I have not previously submitted this work, or part of it, for examination at Unisa for another qualification or at any other higher education institution.

A handwritten signature in black ink, appearing to read 'GS Mahlangu', with a stylized, cursive script.

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## **ACKNOWLEDGEMENTS**

Firstly, I would like to thank the Almighty for giving me the strength to carry on during difficult times and to thank my husband Michael and the children for understanding and giving me time when I needed to go through my research.

Secondly, I would like to thank my companion, friend and brother Steve Malesa for the never-ending support and guidance with my entire studies.

Lastly, may the LORD abundantly bless my supervisors Professor van Graan and Mr Lekubu for their tutelage, guidance, love, patience, support, and persuasion throughout my studies.

## **ABSTRACT**

This study examined the investigation of tender irregularities within the City of Tshwane Metropolitan Municipality (CoT) and employed semi-structured interviews with investigators attached to the CoT Group Audit and Risk (GAR) Division within the Protection Service to obtain data. A literature study relating to aspects of tender irregularities and the investigation of non-compliance was conducted. From the results of this research, it appears that participants do not optimally investigate the non-compliance of tender procedures by service providers to reduce tender irregularities within the CoT. However, it is apparent that participants experience challenges to efficiently investigate the non-compliance of tender procedures by service providers within the CoT to reduce tender irregularities. The study makes recommendations that could assist investigators at the CoT GAR Division to enhance their investigations of the non-compliance of tender procedures by service providers.

### **Key terms**

Fraud; corruption; bribery; tender irregularities; tender procedures; compliance procedures; procurement; investigator; service providers; City of Tshwane Metropolitan Municipality.

## **LIST OF ABBREVIATIONS**

ACFE	Association of Certified Fraud Examiners
AG	Auditor General
AHPRA	Australian Health Practitioner Regulatory Agency
BAC	Bid Adjudication Committee
BEE	Black Economic Empowerment
CD	Compact Disk
CFO	Chief Financial Officer
CoT	City of Tshwane Metropolitan Municipality
DVD	Digital Versatile Disk
EE	Employment Equity
FIS	Forensic Investigation Services
GAR	Group Audit and Risk
GPPF	Government Procurement Policy Framework
ISO	International Organization for Standardization
MFMA	Municipal Finance Management Act
NPA	National Prosecuting Authority
NT	National Treasury
OCPO	Office of the Chief Procurement Officer
OECD	Organisation for Economic Co-Operation and Development
PAA	Public Audit Act
PAMA	Public Administration and Management Act
PRECCA	Preventing and Combating of Corrupt Activities Act
PDA	Personal Digital Assistants
PDI	Previously Disadvantaged Individuals
PFMA	Public Finance Management Act
PPPFA	Preferential Procurement Policy Framework Act
PWC	PriceWaterhouseCoopers
SAPS	South African Police Service

SARS	South African Revenue Service
SCM	Supply Chain Management
SIU	Special Investigating Unit
SONA	State of the Nation Address
UN	United Nations
UNISA	University of South Africa
USB	Universal Serial Bus
VAT	Value Added Tax
WB	World Bank

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## **CHAPTER 1: GENERAL ORIENTATION AND RESEARCH METHODOLOGY**

### **1.1 INTRODUCTION**

Various policies govern Supply Chain Management (SCM) in government departments. However, responsible officials do not always adhere to the guidelines outlined in these policies Matthee (2006:12). Van Zyl (2006:43) indicates that these guidelines are sometimes circumvented because there are no adequate bid committees, suppliers used are not qualified, bids are disregarded for the wrong reasons, the wrong procurement process is used with regard to the threshold, validity periods are not enforced and the bidding process is not used in the correct way. Members of the society pay for the price of irregular tender processes within local governments. Procedures for local government tender processes are enshrined unequivocally in relevant legal provisions. However, one has lost count of how many times local government officials deviate from tender compliance procedures.

### **1.2 BACKGROUND TO THE STUDY**

It is the responsibility of the accounting officers employed by the CoT to make sure that the acquisition process is complied with in their departments as prescribed in the Public Finance Management Act (PFMA), No. 29 of 1999 (South Africa, 1999); Municipal Finance Management Act (MFMA), No. 56 of 2003 (South Africa, 2003); Preferential Procurement Policy Framework Act (PPPFA) (South Africa, 2000b); Treasury Regulations; and the Constitution of the Republic of South Africa, 1996 (South Africa, 1996). Section 38 (iii) of the PFMA 1 of 1999 stipulates that the “accounting officer must ensure that the department, trading entity or constitutional institution has and maintains: an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective”.

#### **1.2.1 Role of City of Tshwane Supply Chain Management**

- The SCM unit of the CoT must develop, coordinate, operate and keep the SCM policy and procedures in order to ensure that all acquisition is done with the said policy and procedures. The SCM unit should keep and continuously update the

supplier database and manage and run all the parallel contracts of which the National Treasury (NT) is the holder (City of Tshwane, 2011).

### 1.2.2 Procurement Process at City of Tshwane

“Clause 8.3 of the CoT SCM Policy Amendment Report (City of Tshwane, 2011) that was approved on 27 September 2007 and amended on 24 February 2011 prescribes the following procurement process”:

<b>Value of Purchase (Value Added Tax (VAT) inclusive)</b>	<b>Procurement method</b>	<b>Delegated authority</b>	<b>Oversight role</b>
R2001 up to R10 000	Quotations	Deputy Director Acquisitions in consultation with the relevant departments	Director Acquisitions
R10 001 up to R30 000	Three quotations – one formal and written and two others. These should comply with the procurement framework of the CoT	Director acquisition in consultation with the relevant departments	Executive Director SCM
R30 001 up to R200 000	Formal written price quotation must comply with the MFMA, must be sealed and placed in a box. Advertisements must run on notice boards as well as feature on the municipality’s website for seven days. Thereafter, points must be allocated in terms of the points system.	Strategic Executive Director in consultation with Director Acquisitions and ED SCM	Executive Director SCM and Chief Financial Officer (CFO)

Tenders from above R200 000 up to R10 million and long term contracts	<p>A competitive bidding process.</p> <p>Advertisements to run on notice boards for 14 days or longer as well as feature on the website of the CoT.</p> <p>Advertisements to be placed in local newspapers and others for 14 days or longer.</p> <p>Points allocated in terms of the points system.</p>	Bid Adjudication Committee (BAC)	City Manager
Tenders above R10 million	<p>A complete bidding process.</p> <p>Advertisements to be placed on notice boards for 30 days or longer.</p> <p>Advertisements to run in local newspapers and more for 30 days or longer</p> <p>Points allocated in terms of the preferential points system.</p>	Accounting officer on recommendation from adjudication committee above R10 million	City Manager

### 1.2.3 City of Tshwane Forensic and Investigation Services Division

The internal GAR Division perform the investigation of tender irregularities within the CoT. The Forensic Investigation Services (FIS) is a division of the GAR. The FIS is mandated to investigate all allegations of tender non-compliance, fraud, including procurement fraud and corruption within the CoT (City of Tshwane, 2013a:1). In terms of the Prevention and Combating of Corrupt Activities Act (PRECCA), No. 12 of 2004 (South Africa, 2004a) all corrupt activities must be brought to the attention of the relevant authorities and offenders should be brought to account.

### 1.3 PROBLEM STATEMENT

Formulating the research problem is the most vital part a research project. Without a sound description of the problem, the research project will be an 'unguided missile', one has no idea which direction it will take Verhoeven (2011:79). According to Leedy and Ormrod (2010:48), researchers get off to a strong start when they begin an unmistakable clear statement of the problem. According to Badenhorst (2010:19), the problem statement is a well-defined statement that briefly gives the research problem. In contrast, Bless, Higson-Smith and Kagee (2006:29) describe a research problem as a broad consideration of the correlation between two or more variables.

Between January 2010 and January 2011, the public sector suffered financial misconduct amounting to R932 million between January 2011 and January 2012 an amount of R1 billion was lost through financial irregularities (Corruption Watch Annual Report, 2013: 1). For the period January 2012 to January 2014, Corruption Watch received 465 reports related to procurement irregularities (Corruption Watch Annual Report, 2013: 1). A clear standing policy framework that guides the manner in which tenders should be procured exists within all local governments, including the CoT. However, Matthee (2006:56) suggests that a number of procurement personnel in conjunction with tender bidders are not adhering to tender compliance procedures as stipulated in the policy framework.

This study examined the investigation of tender irregularities within the CoT. According to the 2013 Audit Report of the Auditor-General to the Gauteng Provincial Legislature and the CoT (City of Tshwane, 2013b:4) the following irregularities regarding tender procedures were discovered:

- The CoT awarded contracts and quotes to bidders who gave no declaration of their possible employment by the state or having relations with somebody who is in the employ of the state as required by National Treasury's Municipal Supply Chain Management regulation 13(c) CoT (City of Tshwane, 2013a:4).
- Contrary to section 112(j) of the MFMA (South Africa, 2003) and SCM regulation 44, tenders were awarded to service providers who are employed by the CoT (City of Tshwane, 2013b:4).

- Furthermore, service providers also did not submit information regarding their possible employment by the CoT as required by SCM regulation 13(c) and regulation 46(2) (e) and the Code of Conduct for staff members issued in terms of Municipal System Act, No. 32 of 2000 (South Africa, 2000a).

The CoT is a direct contact between the State and citizens. However, if citizens are denied access to quality service delivery because of non-compliance with tender procedures that lead to tender irregularities, then the government has failed its people. According to the Report of the Auditor General (AG) to the Gauteng Legislature and the SCM policy CoT (City of Tshwane, 2013c:5), from a forensic investigation that was done, there were allegations that irregularities took place in tender processes during procurement. It was found that, in some cases, quotations were divided in order to arrive at a lower amount and in this way circumvent section 12(3) of the MFMA 56 of 2003 (South Africa, 2003) and SCM policy CoT (City of Tshwane, 2013a:5 ). The way in which the CoT appointed suppliers by making use of financial and legal advisors is being examined. This investigation was still ongoing during this research. According to the Special Investigating Unit (SIU) (2012:27), the service provider of the CoT submitted invoices when no services were rendered for the Home of Jazz Music Festival.

The problem under investigation focuses on the investigation of tender irregularities within CoT. However, compounding the problem is the fact that investigators within the CoT are not acquainted with legal provisions regulating tender procurement at municipal level. According to the CoT Economic Development Agency (City of Tshwane, 2010:4) SCM regulations were not always followed when goods and services were procured. Consequently, tender processes were not adhered to and record-keeping pertaining to performance information was not adequate. Despite all these tender irregularities, sufficient actions were not taken in all instances to ensure that proper management is performed regarding finances and performance. During preliminary interviews conducted with investigators at CoT and perusal of investigation dockets, it was found that fraud, corruption, tender-rigging, kickbacks, and irregular appointments are rife at CoT.

## **1.4 RESEARCH AIM**

According to Mouton and Marais (1996:103), research has as its goal to find facts and new data. The research should also seek to find if patterns are visible in the data. The research aim generally implies an articulation of what the researcher is planning to do and what you hope to achieve Bak (2011:16).

This study aimed to examine the investigation of tender irregularities within the CoT.

## **1.5 RESEARCH QUESTION**

All research begins with the identification of a research question (Noaks & Wincup, 2004:122). According to Willig (2009:20), most qualitative research projects are guided by one or more questions. Wood, Giles and Percy (2012:45) define a research question as a question that the one to which an answer is currently unknown but which can be addressed by a well-designed piece of research. The following research question was formulated for this research:

- Do investigators efficiently investigate the non-compliance of tender procedures by service providers to reduce tender irregularities within the CoT?

## **1.6 PURPOSE OF THE RESEARCH**

The purpose of the research is the key conceptual paragraph that frames and guides the research Badenhorst (2010:12). According to Babbie, Mouton, Vorster, and Prozesky (2011:79), three of the most common purposes of research are exploration, description and explanation. The purpose of this study was:

- To study the investigation procedures in tender irregularities within the CoT and describe them.
- To underline non-compliance of tender processes within the CoT and to highlight the financial implications thereof.
- To determine the extent to which compliance procedures are followed during tender bidding and the degree to which preventative measures to prevent irregularities are applied.

- To empower the investigators in the CoT division GAR as well as the investigators within CoT Protection Services Internal Unit with the findings acquired during the research.

## **1.7 DEMARCATION OF THE STUDY**

The Internal Investigation Unit within CoT Metropolitan Police and the CoT GAR within the CoT Protection Service were the main emphasis of the study. It consists of only 11 members who are mandated to investigate corruption, fraud as well as non-compliance of tender regulations by suppliers within the CoT. The GAR division consists of 25 investigators.

## **1.8 KEY THEORETICAL CONCEPTS**

Conceptualisation is the process of specifying what one means by a term (Bachmann, Russel & Schutt, 2003:64) definitions that describe concepts by using other concepts are conceptual definitions (Welman, Kruger & Mitchell, 2005:20). The following concepts are central to this study and, therefore, warrant clarification:

### **1.8.1 Fraud**

According to Birzer and Roberson (2012:200), fraud is a broad term to indicate that one individual has gained an advantage over another by cunningly using one or more of a variety of possible means to falsely represent goods or information. Fraud is defined by Hopwood, Leiner and Young (2012:11) as when a person gains a benefit above others by means of untruths and false proposals.

### **1.8.2 Corrupt Practice**

A practice is corrupt when an official in the public service is implored or otherwise offered or given anything in order to sway the process of procuring or to unlawfully obtain a contract (South Africa, 2010:17).



### **1.8.3 Tender**

According to the PPPFA, 5 of 2000 (South Africa, 2000b), a tender is an offer that is made formally and in writing on a specified form. This offer is made, together with price quotations and competitive tendering processes or proposals, to a state organ.

### **1.8.4 Corruption**

Corruption is when a person receives or gives personal benefit to somebody in exchange for a task performed (Burchell & Milton, 1997: 643).

### **1.8.5 Bribery**

Bribery takes place when a public or legal officer is offered or given a valuable item in order to change his/her actions as well as when this person accepts such item. It is also a criminal offence to ask for an item(s) as a bribe and is punishable upon the request and not upon the fulfilling of such request (*Wex Legal Dictionary*, 2018).

### **1.8.6 Favouritism**

Favouritism is the unfair practice of giving someone help or advantages that you do not give to others (*Macmillan Dictionary*, 2018).

## **1.9 VALUE OF THE RESEARCH**

According to Denscombe (2002:43), good research needs to be able to demonstrate its relevance.

- Results of the research could be used to enhance existing knowledge and add value to the community of Tshwane and Investigation Unit on how to eliminate tender non-compliance irregularities in the CoT.

- The study demonstrated how to implement and recommend the research problem solving ability, and to add to the body of knowledge in the municipal investigation unit and the criminal justice system.
- The researcher examined compliance procedure in the investigation of tender irregularities within a local government municipal.
- The outcome or the end results of the research could be used to enhance the investigators capabilities in examining compliance procedures in the investigation of tender irregularities within a local government municipality.
- The research would benefit the forensic and investigation unit on contributing their researched knowledge with regard to curbing non-compliance in tender irregularities in the CoT.

## **1.10 RESEARCH APPROACH**

The researcher followed a qualitative research approach. Bordens and Abbott (2014:231) describe qualitative research as written records of observed behaviour that a researcher analyses qualitatively. Dunn (2013:397) similarly explains that qualitative research relies on participants' verbal descriptions and analysis of events. Semi-structured interviews were conducted to gather information from investigators at the FIS. The researcher recorded all the participants that were interviewed with an audio recorder to capture their remarks and responses that were used in the analysis process.

## **1.11 RESEARCH DESIGN**

A research design is a general plan according to which a research strategy will be implemented. It specifies the population to be used in the study in terms of using groups or individual participants, the way in which assessments will be made, in terms of within a group or between groups, and the number of variables that will be included in the study Gravetter and Forzano (2012:190). Empirical research was applied where participants were interviewed one on one to examine non-compliance of suppliers of tendering during their investigations. Furthermore, Gravetter and Forzano (2010:13) mention that an empirical method uses observation or direct sensory experience to obtain knowledge. Research design sets out the steps the researcher plans to take

while doing the research Babbie, et al. (2011:74). A research design is an explanation of the way the researcher plans to achieve the answer to the formulated research problem (Mouton, 2009:175).

## **1.12 TARGET POPULATION AND SAMPLING**

According to Dantzker and Hunter (2006:29), a population is the sum total of all the participants or class of participants from whom the researcher will collect information. For example, police officers, probation officers, and correctional officers are each a population. Similarly, Maxfield and Babbie (2008:437) describe a population as all people, things, or other elements one wish to represent. The population for this research included all the GAR investigators who investigate procurement fraud and irregularities of tender non-compliance. Nevertheless, not all investigators will be interviewed but a target group thereof. By population, we mean all the 'elements' that you will be making statements about in your research (Verhoeven, 2011:175).

According to Bless, Higson-Smith and Kagee (1995:88), non-probability is when it is not possible to calculate beforehand what the odds are of an element being included in the sample. Researchers rely mostly on purposive sampling because of the experience they have or they rely on previous research findings, it is also economical in terms of time and financial expenses.

A sample is a smaller part that is selected from the wider target population to represent the entire population and give relevant information on what the entire group might be like Dantzker and Hunter (2006:29). Investigators that were purposely selected in the sample out of all existing investigators were interviewed. Data were collected until saturation had been reached.

## **1.13 DATA COLLECTION**

Data collection takes place when the researcher uses the selected instrument to engage with the sample or cases selected for investigation in order to obtain information (Mouton, 2009:67). Similarly, Matthews and Ross (2010:43) describe data as opinions or values that can be analysed and from which conclusions can be drawn.

The data collection methods that were used in this study were a literature review and interviews.

### **1.13.1 Literature Review**

Literature review involves perusing published documentation that might be relevant to the current research Bless et al. (1995:22). Moreover, the researcher uses every material available with regard to tender irregularities. Machi and McEnvoy (2012:4) argue that literature review is the written exposition of a case that was argued rationally based on an all-inclusive knowledge of a topic. Matthews and Ross (2010:105) describe literature review as the expansion and detailed study of initial ideas by means of existing literature, such as literature review.

### **1.13.2 Interviews**

According to Bless et al. (1995:106), an interview involves a situation where the participants are communicating directly with each other in order to obtain answers to questions asked. The researcher conducted semi-structured interviews, and the participants expressed themselves with regard to the investigation of tender irregularities. In the same vein, Matthews and Ross (2010:219) concur that an interview is a particular type of conversation between two or more people. The researcher conducted semi-structured interviews with members attached to the CoT GAR within the CoT Protection Service since it allowed participants to provide in-depth information of their personal experiences of the non-compliance of tender procedures by service providers in the investigation of tender irregularities within the CoT.

## **1.14 DATA ANALYSIS**

Data entail the observations collected in the course of a project Dunn (2013:389). Analysis is a process of working with the data to describe, discuss, interpret, evaluate, and explain the data in terms of the research questions or of the research project Matthews and Ross (2010:317). Data analysis is done when the current data are

compared to information already published in reports on the same topic. Most importantly, the field notes can be questioned and reviewed in the light of any new information found (Welman, Kruger & Mitchell, 2011:212). The researcher followed a thematic analysis method as explained by Braun and Clarke (in Gray, 2014:609).

The researcher analysed the data by following the six phases explained by Braun and Clarke:

- Phase 1: She became acquainted with the data, transcribed some necessary data and wrote down initial ideas.
- Phase 2: The researcher systematically created codes to be used for the data.
- Phase 3: She then identified and created themes. By doing this, the researcher grouped the data into the different themes.
- Phase 4: After this, the researcher evaluated the selected themes for validity against the data sets.
- Phase 5: When the evaluation of the themes was done, they were described and given names in terms of their scope and content.
- Phase 6: The last phase was the production of the report. The themes identified had to be corroborated with evidence.

### **1.15 METHODS TO ENSURE VALIDITY**

Validity relates to whether an instrument is measuring what is supposed to measure (Dunn, 2013:399). Validity refers to whether or not an experiment explains what it claims, in other words, the truth of the causality, which is inferred (Breakwell, Hammond, Fife-Schaw & Smith, 2006:73). Furthermore, validity is defined as the ability of your measurement to accurately measure what is supposed to measure (Raacke & Raacke, 2012:84). The interview schedule measured what it was supposed to measure because it adhered to the aims, purpose and research question of the study. The interviews were consistent since investigators were asked the same questions.

## **1.16 METHODS TO ENSURE RELIABILITY**

Reliability is when the measure renders the same results when used in other occasions. Therefore, reliability is primarily concerned with being able to replicate or produce the findings (Raacke & Raacke, 2012:82). In order to adequately test for reliability, the research must be replicable (Verhoeven, 2011:184). If research findings are similar with research conducted elsewhere, then it is regarded as reliable. Data were collected through a literature review and semi-structured interviews. Data collection methods could be regarded as reliable since it is related to the topic in question and it can be replicable. Reliable literature related to the research question was used, such as academic journals and books.

## **1.17 ETHICAL CONSIDERATIONS**

Research ethics involves the researcher to handle all individuals affected by the results of their research study or results honestly and with respect (Gravetter & Forzano, 2010:72). Plagiarism takes place when one person presents the work or ideas of another person under the premise of it being his/her own work or ideas. This is a highly unethical practice (Gravetter & Forzano, 2010:96). The researcher focused on the following ethical considerations:

### **1.17.1 Informed Consent**

When research involves public documents or records that human beings have previously created, such as birth certificates, newspaper articles and so on, such documents and records are generally considered to be freely available for use by researchers. However, when a researcher purposefully sought specific individuals to take part in a research study, he should inform them of the nature, aim and purpose of the study to enable them to decide whether they want to participate based on these facts. They should also be told that they are not obliged to participate and can withdraw their participation whenever they feel they want to (Leedy & Ormrod, 2010:101). Accordingly, the researcher adhered to Leedy and Ormrod's (2010:101) instruction and obtained prior informed consent from participants.

### **1.17.2 Anonymity and Confidentiality**

In order to further scientific progress, people are willing to share private information provided their name is not revealed. This may be the case where employees are asked to reveal information about their employer or their working conditions. Another example is where a person has to reveal his own or another person's addiction to drugs (Bless et al., 1995:103). The information obtained from participants was kept confidential and has not been made available to anyone other than the researcher. Participants' anonymity was also ensured by not divulging any identifiable information that could be traced back to them.

### **1.17.3 Voluntary Participation**

Voluntariness is what study participation should be built upon (Leedy & Ormrod, 2010:101). Participants were informed that participation in this study was strictly voluntary with no penalty for non-participation. In addition, participants were also given the choice to end their participation in the study whenever they want to without having to motivate why.

### **1.17.4 Protection from harm**

The researcher did not expose research participants to unnecessary physical, emotional or psychological harm as advocated by Leedy and Ormrod (2010:101).

## **1.18 SUMMARY**

The chapter presented the methodology adopted by the researcher as a plan or blueprint in addressing the research question. Over and above, the chapter looked into how data was collected, analysed and reported while following scientific research paradigm to address the problem under investigation. The chapter served as a skeleton in which data must be collected and fed into while guided by research

etiquette and the need to explore literature on compliance procedure in the investigation of tender irregularities. It was also in this chapter where the researcher projected how to deal with ethical issues affected by the research topic and research questions.



## **CHAPTER 2: TENDER IRREGULARITIES AND THE INVESTIGATION OF NON-COMPLIANCE**

### **2.1 INTRODUCTION**

The prevalence of fraud and corruption because of tender irregularities in South Africa undermines good public service delivery. The lack of skills and expertise within all levels of government in South Africa results in many services having to be sourced from private owned organisations. According to section 217 (1) of the Constitution of the Republic of South Africa, Act 108 of 1996 (South Africa, 1996), when a state entity at any level of government or any institution indicated in national legislation enters into a contract to obtain goods or services, it must adhere to a system which is fair, equitable, transparent, competitive and cost-effective.

International organisations, such as the World Bank (WB) and United Nations (UN), which South Africa is signatory, have over a decade ago emphasised the importance of quality governance and sound institutions from a developmental perspective (Rothstein, 2011:34). Despite the fact that processes for improvement are used when procuring in the public arena and when using the Supply Chain Management tool, there are still predicaments in South African public procurement practices (Ambe & Badenhorst-Weiss, 2012:243). This chapter looks into legislations and policy-frameworks guiding the awarding of tender in government more particularly at local government. This chapter discusses the policy framework regarding procurement within the CoT as well as legislation governing the awarding of tenders.

## **2.2 OVERVIEW OF THE LEGISLATIVE AND REGULATORY FRAMEWORK GOVERNING TENDER PROCEDURES WITHIN THE CITY OF TSHWANE**

The following discussion focuses on legislation and policies governing tender procedures within the CoT.

### **2.2.1 The City of Tshwane Supply Chain Management Policy Amendment Report**

Themeli (2017:2) summarises the CoT procurement process as follows:

Clause 8.3 of the CoT Supply Chain Management Policy Amendment Report (City of Tshwane, 2011) prescribes that the following procedures be followed when procuring goods and services:

- R0 up to R2000 should be procured through petty cash.
- R2001 up to R10 000 should be procured through quotations.
- R10 001 up to R30 000 should be procured through one formal written and two other price quotations in accordance with council approved procurement framework.
- R30 001 up to R200 000 should be procured through three formal written price quotations.

All procurement should comply with the MFMA, 2003, Act No. 56 of 2003 (South Africa, 2003), should be sealed and placed in the box, should be publicised on notice boards and on the website of the municipality for seven days. After all this has been complied with, points should be allocated in terms of the points system. However, tenders of R200 001 up to 10 million as well as long-term contracts should be subject to a competitive bidding process which includes publication of the tender and the municipality's website and in a local newspaper for 14 days or longer. After this, the tender should be adjudicated in terms of the points system, except for tenders of more than R10 million which should be dealt with in accordance with a competitive bidding process. This means that it should be published on a notice board, the municipality's website and in a local newspaper for 30 days or longer and then dealt with in terms of the preferential points system.

The CoT Supply Chain Management Policy Amendment Report specifically pays attention to the required procedures that service providers should follow to procure goods and services. The stipulations of this Report further prescribe how tenders allocated for goods and services should be awarded according to the value of the purchase.

According to Mantzaris (2014:70) there are some steps to be followed while inviting and adjudicating a tender which are all connected to each other. These steps start with doing a needs analysis, planning the process, defining the requirements and specifications, and selecting the processes and methods to be used. After this, a supplier is sought by means of setting predetermined requirements, publishing a request for tenders, receiving tenders, evaluating the tenders received, and then awarding them. After the tenders have been awarded, the contracts are managed and monitored, orders are placed and payments are made on time. Stock and Lambert (2009: 29) emphasise that it is very important to keep to the rules during tendering, for instance by keeping everything regarding the bids received completely confidential until the opening of the bids. Upon opening the bids, all bidders should be allowed to view all other bids submitted. If the bid requires more than only the best price, it should be clearly stipulated before evaluation starts. It should be ensured that the evaluators are competent in the particular field to do a quick and proper assessment of the bids, and that they make the results known as soon as the evaluation is complete.

In order to ensure that a possible supplier of goods and services is credible, several steps should be followed, as follows: vetting of suppliers; verifying suppliers' actual existence, registration and date of registration; determining suppliers' value-added tax (VAT) status; checking on suppliers' business history; establishing who the directors/members are; considering their credit history; doing a search for civil and criminal judgements. Moreover, their Previously Disadvantaged Individuals (PDI) and Employment Equity (EE) status should be examined and they should be required to sign the code of conduct of the customer; entering into an integrity pact between the customer and the bidding company; introducing greater flexibility with regard to dialogue between purchasers and suppliers; encouraging the use of modern information and communications technologies; using negotiation only in exceptional

circumstances. Furthermore, supply offers should be evaluated against recognised technical specifications (application of International Organization for Standardization (ISO) 9000); considering the economic and financial feasibility of the supplier and its technical abilities and experience in making selections; and using benchmarking to compare the costs and methods of industrial and consumer products (Woods & Mantzaris, 2012:129). Mantzaris (2014: 72) further explains where the tender was for services to be rendered, comparisons in the case of services, comparisons should be made with similar functions, even in other industries. In this way the procurement process can be finalised quickly and transaction costs reduced considerably.

When procurement is done, adequate internal controls are needed to ensure that no irregularities take place, because monitoring and evaluation of procurement procedures are an integral part of the management of an organisation which ensure integrity and compliance with laws and ethical standards. Management should give much attention to ensuring that the procurement process and procedures comply with accountability and transparency and do not fall prey to fraud and corruption (Mantzaris, 2014: 76). Some vitally important steps in the procurement process ensure that corruption does not take place. These are: the internal controls must be distinguished as well as an evaluation of their proper operation, and then chances of these controls being ignored must be removed. Key internal controls that should be assessed include segregation of duties, supervisory controls, receiving controls, authorisation controls, and recording controls (Heggstad, Frøystad & Isaksen, 2010:4).

Participants were asked the following question: *According to you, what procedures should be followed to procure goods and services as stated in the CoT Supply Chain Management Policy according to the value of the services or goods rendered?* The purpose of this question was to assess the participants' familiarity with the required procedures the CoT should follow to procure goods or services. A summary of the participants' responses follows:

- Four participants believed that, depending on the value of the financial value of the tender, tender should be advertised in the accessible media platform inviting competent bidders with reasonable quotation to provide services or goods.

- Two participants stated that tender boxes are placed at CoT procurement offices and the bidders deposit their tender documents in the boxes.
- Five participants mentioned that all bidders are provided equal opportunity if they meet all tender requirements.
- Two participants indicated that tenders which amounts to between R30 001 and R200 000, are procured by means of comparing prices given by potential suppliers of goods or services and lowest price is normally chosen.
- Two participants believed that the winner of the tender is publicly announced after the selection criteria have been followed.
- One participant is of the opinion that, if need be, other bidders who lost out are allowed opportunity to launch grievance against the final decision.

Based on the feedback from the participants, there is a desperate need for the investigators to acquaint themselves with procurement policies and laws regulating procurement of goods and services. That would strengthen their investigation of tender-irregularities and save them against any civil claim that might arise because of their investigation. Limited knowledge expressed by the participants stems from investigators and legal practitioners not cooperating with each other.

### **2.2.2 Local Government: Municipal Finance Management Act 56 of 2003**

Section 175 of the MFMA 56 of 2003 (South Africa, 2003) gives Minister of Finance the power to make regulations of dealings with financial misconduct and related matters. The aforementioned section further stipulates that each municipality must establish reporting procedures to ensure that people can report allegations of financial misconduct without their identity being made known.

Section 175 of the MFMA 56 of 2003 (South Africa, 2003) further stipulates that upon the receipt of allegations of financial misconduct, they must be probed by the municipal entity's disciplinary board to verify whether they are founded. Thereafter, the board should make a recommendation to the council or board of directors on its finding regarding whether the allegations are founded and whether there are sufficient grounds to investigate the allegations.

When an allegation as discussed above is referred to a disciplinary board or an external investigator or investigative team in terms of regulation 6(5) of Municipal Council for investigation, the investigating person or entity must develop terms of references for the investigation, which should be approved by the council or the board of directors.

Section 175 of the MFMA 56 of 2003 (South Africa, 2003), stipulates that, when an investigation is complete, the disciplinary board or independent investigator must write the investigation report and submit it to the mayoral committee and accounting officer or chairperson of the board of directors as well as a copy to the provincial and national treasury.

The MFMA 56 of 2003 (South Africa, 2003), particularly stipulates that regulations of dealing with financial misconduct and related matters should be established at municipalities. The stipulations of the MFMA further prescribe procedures that municipalities should follow to ensure that persons can possible financial misconduct confidentially as well as the investigative procedures that should follow.

### **2.2.3 Public Administration and Management Act 11 of 2014**

It is common in South Africa that business people are appointed in senior positions while their businesses are providing services to government. They are by law required to disclose any conflict of interest up resuming the term of office. However, such laws are a mere writing between the lines. In the 2014/5 State of the Nation Address (SONA) President Zuma highlighted that in order to prevent corruption and promote ethical governance, the Public Administration and Management Act (PAMA) 11 of 2014 (South Africa, 2014) was signed into a law to, among other things, prohibit public servants from doing business with the State. According to Australian Health Practitioner Regulatory Agency (AHPRA) (2014:18), the meaning of the term “conflict of interest” and how it applies to the National Law takes place in the case where the interest or business of a person affects that person’s impartiality or their effectiveness in their duty. Similarly, Reed (2008: 7) asserts that conflict of interest happens when a public official has a private or other interest, which is among others, to influence, or appear to influence, impartial and objective performance of the official duties. From

the discussion above, conflict of interest happens when a public figure unfairly influences decision on the awarding of contracts. If, for example, a director within a government department has a final say over who must be awarded a contract while the family member is one of the bidders, subjectivity will obviously overcome objectivity more particularly if such relationship is not revealed.

Bracking (2007:60) accentuates that there must be clear procedure, guidelines and contract requirements and ethical codes of conduct. According to Ambe and Badenhorst-Weiss (2012:245), Section 112 of the MFMA No 56 of 2003 (South Africa, 2003) set out the procurement reform processes, which stipulates, among others, that all municipalities must have and implement a SCM policy. The latter should be reviewed annually to ensure that it complies with the new legislative requirement and Section 76(4) (C) of the PFMA No 1 of 1999 and the PPPFA No 5 of 2000 (South Africa, 2000b). All role players, including public officials, should perform their duties in such a way that neither they nor their family or friends can expect to receive any illegal gains in the form of a reward, payment or hand out from any person, or provider contractor for themselves. From the discussion above, it is clear that there is a variety of police guides and legislation that outline the manner in which tendering procedures should be adhered to. However, for some reasons, people choose to bypass standard procedures and guidelines covering tender bidding processes. It has been found in Auditor-General's (AG) 2015 Report (South Africa, 2015a) that the CoT procured services and goods without inviting competitive bidders as required by SCM regulations.

According to National Treasury's 2015 Public Sector Supply Chain Review (2015b:3), the new Office of the Chief Procurement Officer (OCPO) modifies and supervises the SCM system that it utilised in the public sector in South Africa to guarantee that the Constitution and related regulations are complied with during procurement in terms of costs, fairness, transparency and competition. The OCPO is not directly involved in procurement, but leads and manages procurement reform, maintains the procurement system and oversees the way in which government does business with the private sector.

From an investigative point of view, there is a variety of policy guides and legislation during investigation of tender irregularities. This must be done by looking for any deviation from the procedures, policy and legislative requirements by the either bidders and the facilitators of a tender process. The latter office must further supplement all other existing policies and laws regarding tender bidding.

#### **2.2.4 Prevention and Combating of Corrupt Activities Act 12 of 2004**

The aim of the PRECCA, No.12 of 2004 (South Africa, 2004a) is to make provision for the existence of corruption and corrupt activities and to implement measures for the prevention and combatting of thereof. The Act is based upon prevention of crimes of which people may be criminally charged for embroiling themselves in corrupt activities during the stages of tendering process. Section 3 of the Act provides that anyone who directly or indirectly accepts, agrees, or offers any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person is guilty of corruption.

According to section 34(1) of the Act, in the case where any person in a position as set out in section 34(4) of the Act and who is aware of criminal activities can be expected to be aware that another person has acted unlawfully (corruption) in terms of sections 3 to 16 or 20 to 21 of the Act, or committed theft, fraud, extortion, forgery or assisted in forging a document to the amount of R100 000, 00 or more, such person is obliged to bring this to the attention to the police or make sure that somebody else reports it. In terms of section 34(2) a person who does not inform the police of such activity is guilty of an offence.

#### **2.2.5 The Public Finance Management Act 29 of 1999**

Mantzaris (2014: 69) explains the PFMA 1 of 1999 (South Africa, 1999) has changed procurement practices in government considerably. One of the most important changes was that authority and responsibility were moved to individual organisations. In order for this to be successful there is a need for a national framework that gives the basis for procurement principles that will be instituted to guarantee that policies are applied in a uniform way in all spheres of government.



The PFMA 1 of 1999 (South Africa, 1999) provides that accounting officers and accounting authorities must have adequate systems for the maintenance of financial management, procurement, risk, internal control, and internal audit systems are in place at their institutions as well as a system to evaluate all major capital projects. The supply chain management regulations to be used are set out in the Treasury Regulations. The MFMA (South Africa, 2003) have almost the same provisions as the PFMA. The only difference being that those of the MFMA is applicable to entities in the municipal sphere and not national. Section 112 of the MFMA permits the Minister of Finance to issue a prescribed regulatory framework for SCM. There are various elements in the public sector SCM system which are provided for in the government's Government Procurement Policy Framework (GPPF). From the above it is apparent that there are many pieces of legislation and internal control systems that should be used to ensure that tender processes are fair. However, the fact that there are so many irregularities during the tender process indicates that the process is not always followed in order to advance certain individuals. Tenders must comply with every aspects of the invitation to tender and meet any other requirements outlined by the procuring entity in its tender documents (Bolton, 2014:1).

Section 217 of the Constitution and Chapter 11 of the MFMA 56 of 2003 (South Africa, 2003) requires that organs of state at all government levels, or any other institution identified in national legislation, enter into contracts for the procurement of goods or services, these contracts must be entered into by using a system which is fair, equitable, transparent, competitive and cost-effective. The latter's SCM policy must include the following:

- The variety processes in the SCM system available to municipalities and municipal entities, including tenders, quotations, auctions and other types of competitive bidding.
- When a specific process is legislated to be used by these entities.
- Procedures and mechanisms for each type of process.
- Procedures and mechanisms for more flexible processes for contracts that do not reach prescribed amount.
- Open and transparent pre-qualification processes for tenders or other bids.

- Competitive bidding processes in which only pre-qualified persons may participate.
- Bid documentation, advertising of and invitations for contracts.

During 2015 the SONA, former President Jacob Zuma highlighted that they were in the process of establishing a central tender board that will scrutinise all tenders throughout government to prevent unlawful action in the supply chain system in government. “This body will work with the chief procurement officer whose main function will be to check on pricing and adherence to procedures as well as fairness,” said the President in his 6th SONA. The AG of South Africa has, in terms of the Constitution, jurisdiction over the whole public sector (South Africa, 2014).

### **2.2.6 The Public Audit Act 25 of 2004**

In terms of the Public Audit Act (PAA), No. 25 of 2004 (South Africa, 2004b) the Auditor-General must audit and report on the accounts, financial statements and financial management of:

- All national and provincial state departments and administrations;
- All constitutional institutions;
- The administration of Parliament and of each provincial legislature;
- All municipalities;
- All municipal entities; and

Any other institution or accounting entity required by other national or by provincial legislation to be audited by the Auditor-General.

Sections 20(2)(b) and 28(1)(b) of the PAA, the Auditor-General’s report must reflect material findings on non-compliance with relevant laws and regulations in respect of the following inter alia subject matters, as applicable:

- strategic planning and performance management;
- budgets;
- financial statements, performance and annual reports;
- audit committees;

- Internal audit;
- procurement and contract management;
- human resource management and compensation;
- expenditure management;
- transfer of funds and/or conditional grants;
- revenue management;
- asset and liability management; and
- financial misconduct.

The aforementioned legislations and policy guidelines clarify what to do and what not to do by the relevant parties during facilitation of procurement process.

According to Public Sector Supply Chain Management Review (South Africa, 2015a:10), the following were regularly found in the Auditor-General's Annual Reports on non-compliance with the SCM and irregular expenditure:

- The tax affairs of suppliers who were appointed were not always in order
- Failure to use competitive processes for quotations and bids.
- The preference points system was not always used correctly.
- Not enough suitable bid committees.
- Suppliers that were not qualified were used.
- Bids were overlooked for incorrect reasons.
- The wrong processes were used in terms of threshold values when procuring.

For quotations and competitive bidding:

- Extension of validity periods;
- Incorrect use of the limited bidding process;
- Inadequate controls and procedures for handling bids;
- Appointment of bid committee members not aligned with policy requirements;
- Insufficient motivation for deviations from SCM procedures; and
- Compliance, investigation and irregularities

Participants were asked the following question: *Which policies and legislation do you use to direct your investigations of tender irregularities, financial misconduct and related matters?* The purpose of this question was to examine participants' knowledge of the various policy and legislative directives governing tender fraud in procurement. A summary of the participants' responses follows:

- Five participants expressed that tenders are guided by the Constitution of the country and Municipal System Act 32 of 2000 as well as Government Procurement guided by the NT Republic of South Africa.
- Two participants indicated PPPFA No. 5 of 2000 provides guidelines on the processes and decision to award contract within the CoT.
- Two participants stated that the MFMA 56 of 2003, Government Gazette No. 26019 categorically states the whole procedure to be followed when awarding contracts within the CoT.
- Seven participants are of the view that the PRECCA No. 12 of 2004 guard against any deviation from the procedures and laws when awarding contracts.

It appears from the participant's responses that they have basic knowledge about policies and laws governing procurement of services and goods. However, the investigators must go beyond reproach on the legislation and policies covering procurement of services. That would protect them against investigation flaws that would render misconduct in bidding process going unpunished. Knowledge of law governing public procurement is the fundamental core of the investigation of tender irregularities.

The following discussion provides an overview of the types of tender fraud in procurement.

### **2.3 TYPES OF TENDER FRAUD IN PROCUREMENT**

The World Bank (2013: 7) explains corruption in procurement usually has its origin in a request for, or offer of, payment. After this, followed by collusive tendering and more fraud to hide these irregularities:

- Demand for payment: When, in order to irregularly be awarded a contract, a firm or individual offers a bribe to a government official and such official accepts such bribe. Usually, the official who is involved in corruption will allow the other party to charge more for supplies to recover the money lost to the bribe.
- Bid rigging: Government officials interfere with the bidding process to make sure that the contract is awarded to the firm which offers the bribe (and which charges exorbitant prices to recover the money lost on bribes).
- Fraud: The corrupt firm to whom the contract was fraudulently awarded charges exorbitant prices, sends invoices for work they did not perform, does not meet contract specifications or uses products of poor quality to complete the work in order to regain the money lost to the bribe. In order to do all this, more illegal payments often have to be made to inspectors or auditors.

Heggstad et al. (2010:8) explain that corruption in procurement could occur as follows:

- Bribery is regarded as the type of corruption that is used the most. It can be described as the offering of monetary or other reward to gain a benefit. Bribes can ensure that other suppliers are used than the best.
- Extortion can entail harming or threatening someone in exchange for something.

Embezzlement is the when a person or firm steals or misuses property or money entrusted to someone (usually themselves), but owned by others (usually their employer) (Andvig & Fjeldstad, 2001:8). Nepotism is to favour relatives when granting jobs or benefits. Patronage systems: Patronage takes place when local public office holders grant favours, jobs and contracts in return for political support. Such systems tend to disregard formal rules, and instead give importance to personal channels (Andvig & Fjeldstad, 2001:16).

Fraud involves some kind of deceit and manipulation or distortion of information, by a public officer, with the intention to seek personal gain. In procurement corruption, fraud often takes the form of failure to meet contract specifications, or false, inflated or duplicated invoices.

Participants were asked the following question: *Name the types of tender fraud in procurement?* The purpose of this question was to evaluate participants' understanding of the types of tender fraud in procurement. A summary of the participants' responses follows:

- Six participants indicated that bidders bribing procurement officials in the run-up to bidding process to influence the awarding of contracts was prevailing.
- Four participants expressed that procurement officials demanding that bidders pay in exchange of contracts was evidenced by luxury lifestyles among procurement officials.
- Two participants believed that forged Black Economic Empowerment (BEE) documents included in the tender documents is one of red-flag indicators.
- Four participants responded that falsified South African Revenue Services (SARS) certificates are presented as tax compliance to obtain contracts within CoT is common indicator of tender-irregularity.

Feedback provided by the participants indicates that tender procurement fraud is normalised to such an extent that it is no longer viewed as misconduct. Narrow understanding of types of tender procurement fraud is explained by lack of cooperation with other stakeholders such as National Prosecuting Authority (NPA) and South African Police Service (SAPS) Commercial Crime Unit. The level of understanding could be enhanced by participating in workshops often hosted by the Association of Certified Fraud Examiners (ACFE) across the country. Procurement fraud red flags follow for discussion.

## **2.4 PROCUREMENT FRAUD RED FLAGS**

The supply chain process lends itself to fraud being committed. From procurement to distribution there are always parts where employees and external parties (such as suppliers, distributors and competitors) can perform fraudulent activities, such as issuing false invoices, offering and accepting bribes and kickbacks, stealing inventory and using substandard goods. Some of the “red flags” to look out for include:

- Poor or non-existent record keeping;
- Higher-price, lower-quality goods;
- Excessive entertaining of procurement staff by suppliers;
- Deviations in communications between procurement staff and suppliers, such as calls or text messaging to mobile phones;
- Procurement staff demanding extended periods of notice before they allow an audit to take place; and
- Inexperienced buyers dealing with overbearing suppliers and buyers not taking leave for extended periods (Deloitte & Touche, 2014:2).

Mufutau and Mojisola (2016:9) identify the following indicators of procurement fraud:

- When control processes in the purchase department are not applied successfully;
- When new, unknown vendors are used;
- When employees do not stay in the purchasing department for long;
- When certain vendors receive more contracts for a reason;
- When a person(s) working for the company has a relation with a person(s) from the vendor (e.g. joint vacation or leisure activities);
- When a vendor without an apparent competitive advantage or with low-quality goods and services are regularly awarded tenders;
- When there are regular queries and doubts regarding an employee or entity with relation to fraud; and
- When documentation for important purchases are missed often (contracts, bills of delivery, price lists).

The World Bank (2013:6) explains a red flag as an indicator of possible fraud or corruption. In all types of public projects there can be a variety of possibilities of fraud and corruption. These could be found in irregularities in bidding documents such as when bids from different bidders are faxed from the same telephone number. Further red flags for fraud include when more is paid on an invoice. The procurement cycle consists of many steps. Therefore, risks of corruption can be found throughout the

cycle. Heggstad, et al. (2010:17) summarise the common signs or red flags of corruption in different stages of the tendering processes in Figure 2.1 as follows:

**Figure 2.1 Common signs or red flags of corruption in different stages of the tendering processes**

Unreasonable prequalification requirements	Excluding qualified bidders
Ambiguous, incomplete or misleading contract Specifications	Unbalanced bidding, corruption
Contract specifications are too narrow or too broad	Rigged specifications, excluding qualified bidders, corruption
<b>Tendering red flags</b>	<b>Tendering corruption schemes</b>
Failure to make bidding documents available	Excluding qualified bidders, corruption
Short or inadequate notice to bidders	Excluding qualified bidders, corruption
Unusual bidding patterns	Collusive bidding
Apparent connections between bidders	Collusive bidding
Bidder not listed in business or telephone	Collusive bidding
Multiple contract awards to the same company	Corruption
Qualified companies fail to bid	Excluding qualified bidders, collusive
Rotation of winning bidders	Collusive bidding
Unreasonably high bids	Collusive bidding
Unreasonably low bids	Unbalanced bidding, corruption
Non-transparent bid-opening procedures	Manipulation of bids, excluding qualified bidders
Award to other than the lowest qualified bidder	Manipulation of bids, corruption
Disqualifications that are poorly supported	Excluding qualified bidders, corruption
Pressure to select a certain contractor subcontractor	Corruption
Winning bid is very close to budget or estimate	Unbalanced bidding, corruption
Long unexplained delays in contract award or Negotiations	Manipulation of bids, corruption
<b>Post-award red flags</b>	<b>Post-award schemes</b>
Use of questionable agents or subcontractors	Corruption
Complaints regarding poor quality goods, works or Services	Failure to meet contract specification
Continued acceptance of poor quality goods, works or services	Corruption
Delivery of poor quality goods, works or services	Failure to meet contract specification
Questionable contract amendments (change orders)	Changes in contract to increase price, Corruption



Red flags of corruption	Related corruption schemes
Pre-tendering red flags	Pre-tendering corruption schemes
Purchase of unnecessary or inappropriate	Corruption
Manipulation of procurement thresholds to avoid prior review	Unjustified no-bid awards
Inadequate evaluation criteria or procedures	Manipulation of bids, Excluding qualified bidders, corruption

Participants were asked the following question: *According to you, what are the common red flags of fraud in the different stages of the tendering processes?* The purpose of this question was to ascertain the participants' knowledge of the typical red flags of corruption in the different stages of the tendering processes.

A summary of the participants' responses follows:

- Six participants indicated that procurement officials living beyond their salaries raised suspicion during investigation of tender irregularities.
- Four participants were concerned that suspected internal officials are never absent from work throughout the year.
- Two participants indicated that incompetent service providers are awarded contracts followed by unhappy recipients of the service.
- Two participants expressed that poor workmanship in exchange of a huge highly priced contract became one of the common red-flags.
- Two participants are of the impression that increased community protests against poor service delivery is obvious indicator of procurement misconduct.

Participant's responses indicate that they are not sufficiently knowledgeable about lifestyle audit methods, which may help indications of red flags against suspects involved in irregular tender procurement processes. It was also learnt that investigators marginalise their investigation by not paying enough attention to the corrupted and corruptee during an investigation.

The following discussion provides an overview of investigative methods to detect tender irregularities and non-compliance procedures.

## **2.5 INVESTIGATIVE METHODS TO DETECT TENDER IRREGULARITIES AND NON-COMPLIANCE**

Fraud investigations differ from normal police investigations because it usually starts with only a suspicion that fraudulent activity is present without any direct evidence. PriceWaterhouseCoopers (PWC) (2008:28). Organisations in the public sector are open to various kinds of fraud and corruption in almost all areas of activity and transaction.

Notwithstanding, it appears that in numerous nations, particularly developing countries, corruption is found in the domain of procurement more than any place else. This is on the grounds that this is the environment where there are the most chances to take part in corrupt activities and where the rewards can be the highest; therefore, various kinds of corrupt activities occur in procurement, such as fraud, bribery, collusion, extortion, etc. (Mantzaris, 2014:67). It is therefore important to efficiently apply investigative methods in the investigation of tender irregularities and non-compliance. Public procurement is the function whereby public sector organisations acquire goods, services and development and construction projects from suppliers in the local and international market, subject to the general principles of fairness, equitability, transparency, competitiveness and cost-effectiveness (Ambe & Badenhorst-Weiss, 2012:244).

Public officials are government's contact point with the public and when they illegally spend money and other resources that the public desperately needs, they are depriving members of the public of essential services (Solidarity, 2015:11). Davia (2000:34–35) asserts that fraud detection and the investigation thereof, are concepts that are linked together. The first stage is the detection of fraud and the reaction thereon is the investigation and is therefore very important to be done. Bologna and Shaw (1997:1) explain that in a company there are two categories of fraud: internal fraud is when fraud is committed by employees, directors, etc.) and external fraud is when fraud is committed by contractors, suppliers, service providers, etc.). Investigators must know which of these two types they are looking for in order to find the evidence as this could be very easy to miss as it usually consists of a few small

pieces of evidence that have to be put together and checked in order to bring the case to court (Davia, Coggins, Wideman & Kastantin, 2000:60).

Baily, Farmer, Jessop and Jones (2005:12) explain forms of corruption that seem to be present in the tender process. These include manipulating the tender processes to sway the scale in favour of a specific project, giving inside information to a particular bidder that other bidders do not have, where bidders do not receive the same information possibly due to a procurement official altering some bidders' information. Information brokers can also try to buy information from officials in the purchasing or decision-making parts of the deals to sell this information to competing bidders. Woods and Mantzaris (2012:131) highlight that other forms of bid rigging include the following:

- Collusive bidding (when bidders agree amongst themselves beforehand as to who should win the tender, with some secret agreement that the other bidders will be compensated in some way, sometimes out of the inflated profits of the winning bidder, or by taking turns to win tenders); and
- Improperly awarded tenders (including the wide-ranging possibilities that exist for corruption during the tender evaluation and decision-making phases).

The experience is that the individual(s) who present(s) the information from the evaluators to the decision-makers are often in a unique and strong position to influence the decision taken.

In cases of corporate fraud and corruption within the CoT, allegations of fraud, theft and corruption are often received by the SAPS, through tip offs via the hotline, account reconciliation, surveillance, information technology controls, the Public Protector (PP) and or the Public Service Commission. In some cases, accounting discrepancies are detected by vetting officers who will start an investigation process Bologna and Shaw (1997:2). It is important to pinpoint the motive for the fraud in order to find the perpetrator because, according to various authors, such as Robertson (2000:193) as well as Silverstone and Sheetz (2007:18), the motive is the main reason why criminal misconduct such as fraud takes place. The presence of any red flags will indicate the possible motive of the offender.

Man-wai ([s.a]: 143) identifies the following essential fraud investigation techniques and skills:

- ability to identify and trace persons, companies and properties;
- interview technique;
- document examination;
- financial investigation;
- conducting a search and arrest operations;
- physical and technical surveillance;
- acting as undercover agent;
- handling informers;
- conducting an entrapment operation; and
- witness protection.

The Organisation for Economic Co-operation and Development (OECD) (2012: 21 and 24) similarly identifies the following fraud investigative techniques: interviewing of witnesses; searches of suspects' premises; covert operations, informants; interception of communications; and electronic surveillance. The OECD (2012: 23) is further of the view that basic investigative techniques, such as interviews and searches, remain the best way to investigate fraud. As a result, forensic interviewing as well as search and seizure of computer and other digital-related evidence follows for discussion.

### **2.5.1 Forensic interviewing as method to investigate tender irregularities and non-compliance**

During the investigation of tender-related criminal misconduct, a variety of people could be suspects or witnesses. The investigator needs to embrace a variety of methods to deal with all types of evidence, ranging from physical to oral-evidence in order to outline a sound and logical sequence of events at the end of an investigation. One method to utilise in the investigation of tender-related misconduct is forensic interviewing. Therefore, the investigator must have comprehensive forensic interviewing skills. Palmiotto (2013:53) underscores that the interviewing process needs preparation, acquaintance with the case, knowledge of the subject, knowledge of oneself, a proper location, and sufficient time. According to Inbau, Reid, Buckley,

and Jayne (2015:19), the psychological factor that contributes to the success of an interview is privacy, being alone with the subject for interview during questioning. Investigators much refresh their memories by re-visiting the crime scene, viewing the crime scene photos, and review the whole investigation file to acquaint themselves with the details of the case (Osterburg & Ward, 2010:249). "There is no substitute for private location for getting an interview off on the right foot" (Napier, 2010:126).

In order to determine a suspect's alibi, what the witness has seen, or has heard, the interviewer must elicit such information by asking an initial open-ended question early during the interview Inbau et al. (2015:50). Napier (2010: 127) argues that a well-planned, steady pace allows avoiding mistakes that occur when an interview is hurried. According to Osterburg and Ward (2010:119), people accumulate the second knowledge during their day-to-day involving close relationships as well as informal relationships, and when they hear others' remark or arguments.

Participants were asked the following question: *Do you utilise interviewing as method to investigate tender irregularities and non-compliance? If not, what are the inhibiting factors for not utilising this method? If affirmative, is this method successful?* The purpose of this question was to determine if participants utilise interviewing as method to investigate tender irregularities and non-compliance. In summary, the participants responded as follows to this question:

- Six participants agreed that interviewing is a crucial part of investigation as it provides for the opportunity for the provision of first-hand information by the parties directly or indirectly involved in the misconduct.
- Four participants believed that interviewing has many times led to confessions by suspects and successful prosecution against them.
- Six participants responded that interviewing feedback often times corroborate other digital evidence collected during the initial investigation of tender-irregularities.

Feedback from the participants shows that interviewing plays a significant role and mostly successful as it leads to where physical evidence linking suspects with misconduct is located. One of the factors is that witnesses do not want to participate

in forensic interviewing for the fear of reprisal by the suspects concerned. Although successful, their interviewing techniques are compromised by the lack of continuous training and workshops to sharpen their interviewing methods.

### **2.5.2 Search and seizure of computer and other digital-related evidence in the investigation of tender irregularities and non-compliance**

Although traditional investigation procedures are standardised and often successful, an investigation should be tailored according to circumstances of the case involved. Public officials, including municipal employees, are issued with electronic equipment, such as personal computers, laptops, and cell phones to carry out their daily functions. This equipment is usually used during the commission of tender-related misconduct generating a considerable amount of evidence. In addition, evidence of fraud and corruption is found in documents, either electronic and or hard copies. Therefore, it is vital that the investigator should be acquainted with relevant law and procedures of collection and analysing documentary and digital-related evidence. During investigation of tender irregularities and non-compliance, evidence is generated by perpetrators by means of computers and other digital equipment. The investigation of tender irregularities and non-compliance is usually centred around electronic equipment, such as computers, laptops, cell phones and witnesses. According to a PWC (2008: 36), in the world of business paper trails are mainly kept on personal computers or other electronic devices and no longer on paper and therefore a new field of work has come into being, namely computer forensics. Computer forensics takes place when the investigator confiscates and analyses data on electronic devices. If this is done in the correct manner, it will be admissible as evidence in a court of law. Computer forensics is a very important part of modern fraud investigation.

Britz (2013: 306) explains that during the application of a search warrant, operating systems, storage devices, and hardware specifications should be featured in the application. Similarly, Solomon, Rudolph, Tittel, Broom and Barret (2011:63) assert that prior to the collection of any evidence, it is imperative to ensure one has the right to search or seize evidence in question. The right to privacy is enshrined in Chapter 2, Section 35 of the Constitution. For that reason, in certain circumstances, investigators use the limitation clause in section 36 of the Constitution to limit certain

rights. For example, if it is suspected that a suspect used a cell phone and personal computer to facilitate the tender irregularity or non-compliance, the investigator, with the assistance of the prosecutor, could approach the court to obtain a search warrant.

According to the Office of Justice Programs (2008: vi) the following general forensic principles should be applied when dealing with digital evidence:

- When evidence of a digital nature is obtained, safeguarded and moved, such evidence should not be altered;
- No person who have not received training in the investigation of digital evidence should do such investigation; and
- All actions taken while confiscating, moving and safe keeping evidence of a digital nature should be recorded fully, conserved and available for review.

Participants were asked the following question: *According to you, what general investigative principles should be followed when dealing with computer and other digital-related evidence in the investigation of tender irregularities?* The purpose of this question was to determine participants' familiarity with the general principles that should be followed to search and seize computer and other digital-related evidence in the investigation of tender irregularities and non-compliance. In summary, the participants responded as follows to this question:

- Six participants expressed that before any computer and other digital-related evidence is seized for further investigation, it must be photographed the way it was discovered.
- Seven participants stressed that computer generated evidence is hypersensitive and once destroyed, it can never be recovered. Therefore, computer experts should be involved in search and seizure of digital evidence.
- Three participants emphasised that most of evidence is recovered from hard-drives and external storages such as Universal Serial Bus (USB) and external hard-drives and servers may help in recovering deleted information.

Based on the feedback above, it is clear that participants are not sufficiently acquainted with the ever-changing field of digital technology, which often explains why digital

evidence was lost if not destroyed. Feedback further indicates a lack of involvement of cyber forensic expert in more complex cases where there is more digital evidence involved.

### **2.5.3 Preservation and collection tools for digital evidence during the investigation of tender irregularities**

Defence lawyers often scrutinise the manner in which evidence was handled and usually attempt to expose shortcomings of the investigators during the collection of evidence. It is imperative that integrity of evidence collected from computers and other equipment is handled with utmost care until the case is disposed of in court or disciplinary hearing. Digital evidence is so sensitive that it is important that its collection by forensic tools is completely verifiable and remain the same as the original source (Goel, 2010:124). Bolt (2011:61) asserts that when preserving computer hard drives, the necessary steps should be taken to lessen the chances of damage to the hard drive, and a main aspect is to ensure that the collection and preservation process is well documented and repeatable. In addition, multiple-boot disks are employed to avoid self-destruction programs used by suspects to minimise changes to the suspected hard drive (i.e. during the routine boot process, disk space is re-assigned and file slack may be overwritten (Britz, 2013:312). The forensic software must have the ability to acquire digital evidence or data files by reading that information from a variety of media types and formats (Girard, 2011: 407). Girard further maintains that Access Data's Forensic Toolkit can read hard drives, Compact Disk's (CD), Digital Versatile Disk's (DVD), USBs and cell phone memory, as well as variety of other media types. In the same vein, McMahon (2014:172) concurs with the argument stating that the key to successful recovery of digital evidence is to gain access to or preserve the integrity of the target media as quickly as possible. Furthermore, target media does not only include personal computer hard drives, but other types of storage media including tape backups, archives, floppy diskettes, Personal Digital Assistants (PDA), like palms, and other removable storage.



#### **2.5.4 Examination of digital evidence by the forensic investigators**

According to Kamble and Jain (2015:159), it is better to conduct an examination of digital evidence on a copy of the original evidence. Mendell (2013:67) underscores that an expert can obtain the following information for the investigator:

- identification of the files and keywords on the hard drive;
- revealing the contents of the internet files;
- locating images;
- finding deleted files and their contents;
- locating fragments of data remaining on the hard drive or “slack space”;
- examining the contents of virtual memory, a rich source of information about the recent data created and transacted on the PC, also known as “swap file”;
- Opening files protected by passwords and encryption; and examining e-mails.

At the analysis stage, the investigator normally recovers evidential material using a variety of methodologies (Kamble & Jain, 2015: 159). Girard (2011: 407) suggests that data found in the hard drive relating to access areas of the disk, like unallocated space on a disk, which is space that is not currently used to store active data, but may have previously stored a file, and slack space, which is remnant area at the end of a file must be analysed. According to Marcella and Menendez (2008: 49), the speed at which new technology takes to the market, and subsequently can be open to abuse or misuse for ill gain makes it difficult for cyber forensic investigators to keep abreast with or even ahead of the criminals. Solomon et al. (2011:137) reinforce there is a common believe that when one deletes information from an electronic device such as a computer, all the related information in that file is also deleted. However, this is not true as there is a tool that can extract such deleted files from the hard drive (Davy data recovery utility). This is supported by McMahon (2014: 169) who outlines that when a computer user deletes a file, the operating systems only deletes the first letter of the file name from the file allocation table, and reports the sectors containing the “deleted” data as “empty” or available for the new storage of new data. The latter goes on to say that the old (deleted) data remain

unchanged until new data are saved in the specific sector and cluster where the residual data sit at this time.

Participants were asked the following question: *In your opinion, what are the procedures to follow during the search and seizure of computer and other digital-related evidence in the investigation of tender irregularities?* The purpose of this question was to determine participants' familiarity with the required procedures to search and seize computer and other digital-related evidence in the investigation of tender irregularities and non-compliance.

In summary, the participants responded as follows to this question:

- Eight participants emphasised that investigators who received cyber forensic training must play a leading role since they know sensitivity of digital evidence and they know how to recover and process it.
- Two participants indicated that recovered evidence must be copied for back up purpose in case the original evidence is lost.
- Three participants stressed that official laptops and cell phones must be seized from the suspected officials and placed in evidence bags for processing in digital evidence lab.
- One participant is of the view that network service providers must be utilised in the recovery of cell phone and other communication records for analysis by the investigators.
- One participant believes that if cell phones are part of evidence during any stage of the investigation, they must never be switched off, and the battery power should be retained as some evidence might be lost in case of power loss.
- One participant stated that digital technology is constantly changing therefore investigators must receive constant and continuous training in cyber forensic for the interest of integrity of computer and digital evidence.

It is evident that investigators need to undergo extensive and continuous training to be able to perform their duties without any hinder.

### **2.5.5 Report on digital evidence after forensic investigation**

When an investigation is complete, the information should be reported in non-technical language (Kamble & Jain, 2015: 159). According to McMahon (2014: 165) a summary of the fraudulent incident, a description of the evidence that constitutes the crime, a description of the way in which the crime was perpetrated, the motive of the suspected perpetrator, the financial impact of the fraud, and the review of the evidence identifying those responsible should all be included in the research report. Gbegi (2014: 71) believes that prior to writing an investigative report the investigator should compile all data gathered during investigations, and review it to determine how the report must be organised. An investigative report must include as much significant detail as possible to accurately document the actions of the investigator without burden (Silverstone & Sweetz, 2007:265). From an investigative point of view in South Africa, the cyber forensic expert must complete a statement in terms of Section 212 of Criminal Procedures Act 51 of 1977 (South Africa, 1977). The latter must report on the activities taken, from the collection to processing of digital evidence as well as chain of custody in handling the digital evidence.

## **2.6 SUMMARY**

Tender irregularities arise when policies, relevant legislations and the supreme law of the country in the form of constitution are contravened. Procurement of goods and services is common at all government departments in order to dish out improved service delivery. However, procurement is a long chain, which unscrupulous contractors and final decision makers within the governments explore weakest link to steal from taxpayers' money through corrupt activities. This chapter looked into how the policies and legislation outline the procurement process in a fair and transparent manner for justified benefits of stakeholders. It is the violation of the policies and laws that display that irregularly. This chapter further covered the relevant legal provisions and internal policies within municipality to the supply chain.

## **CHAPTER 3: FINDINGS AND RECOMMENDATIONS**

### **3.1 INTRODUCTION**

This study examined the investigation of tender irregularities within the CoT. The study described non-compliance and tender irregularities to determine if investigators at the CoT efficiently investigate the non-compliance of tender procedures by service providers to reduce tender irregularities. This chapter summarises Chapter 1 and Chapter 2 of the dissertation, after which the recommendations are presented based on the findings discussed in Chapter 2.

### **3.2 SUMMARY**

Chapter 1 presented a general orientation of the study. The chapter started with the identification and confirmation of the identified research problem. Arising from the identified research problem, the aim, purpose and research question of this study were presented.

The following aim of this study was achieved:

- To examine the investigation of tender irregularities within the CoT.

The following purpose of this study was achieved:

- The investigation procedures in tender irregularities within the CoT were explored and described.
- The non-compliance of tender processes within the CoT were underlined and the financial implications thereof highlighted.
- To determine the extent to which the prescribed compliance procedures are applied during tender bidding.

Subsequently, the following primary research question was adequately addressed:

- Do investigators efficiently investigate the non-compliance of tender procedures by service providers to reduce tender irregularities within the CoT?

The identified study population and sample for this study were indicated and their inclusion motivated, followed by an overview of the research methodology utilised in this study. This chapter concluded with a summary of the factors taken into consideration to ensure trustworthiness and the ethical considerations of the study.

Chapter 2 provided an overview of tender irregularities and the investigation of non-compliance. The chapter commenced with an overview of the legislative and regulatory framework governing tender procedures within the CoT. The chapter then presented a discussion of the types of tender fraud in procurement, procurement fraud red flags, and investigative methods to detect tender irregularities and non-compliance. The findings consequential to the semi-structured interviews were presented and integrated into a discussion of the relevant literature on tender irregularities.

### **3.3 RECOMMENDATIONS**

The findings of this study, as illustrated in Chapter 2, call for recommendations on how investigators could more efficiently investigate the non-compliance of tender procedures by service providers to reduce tender irregularities within the CoT. These recommendations are focused on the responses received from participants, and are concentrated on the investigation of tender irregularities within the CoT.

The recommendations are presented below:

- Investigators must acquaint themselves with existing laws and newly promulgated law dealing with fraud and corruption in tender bidding and awarding processes. Procedural technicalities are some of the reasons why cases are lost in court. Therefore, investigators must read extensively on criminal procedures act, law of evidence as well as a thorough study of the constitution.
- Cases should be thoroughly investigated before a decision to institute litigations against non-compliance and tender irregularities is taken. Despite the higher

volumes of cases reported for non-compliance and irregularities in the awarding of tenders, there is no sufficient literature covering the topic, therefore the researcher recommends further research.

- Persons involved in tender related investigations must be subjected to security vetting on a regular basis as by the virtue of the job, they have potential to be corrupted. It is further recommended that investigation dockets be thoroughly secured and accounted for at all times. Investigators must be in touch with new developments on training models designed to fight fraud and corruption within government departments. The CoT must maintain its own in-house training facility that will also accommodate forensic investigators.
- An investigation into tender irregularities involves more of documentary evidence, including prints and electronic versions. The investigators must strictly maintain the integrity of such evidence's authenticity as well as maintaining a chain of possession. For successful investigation and prosecution of non-compliance and tender irregularities, it is recommended that investigators observe their professional code of ethics to sustain personal integrity.
- For policy purposes, the researcher recommends that the shortlisted bidders be subjected to security vetting prior to the awarding of contracts to minimize incidents of tender irregularities and non-compliance in tender contracts.
- Investigators must be encouraged to join fraud and corruption fighting organisations such as Corruption Watch and the ACFE as they have programmes that inform members about in-depth meaning of corruptions and fraud as well as detailed symptoms of fraud and corruption and new modus operandi used by perpetrators.
- GAR within the CoT should establish its own internal academy with the curriculum designed to fight irregularities during the awarding of contracts. Investigators should update themselves with amended sections in the relevant legislations.
- Comprehensive understanding and regular acquaintance with the PFMA, Act 1 of 1999 and the PPPFA are the pivotal core of an investigation of tender irregularities, as it channels an investigation in a right direction. Investigators must have a thorough understanding of all laws governing fraud and corruption-related incidents. That would be achieved by continued and compulsory training

for the investigators. Investigators must further empower themselves at institutions of higher learning to comprehend the skills and experience they already accumulated.

### **3.4 CONCLUSION**

This study examined compliance procedures in the investigation of tender irregularities within the CoT. The reviewed literature presents the importance of the sufficient investigation of non-compliance of tender procedures. However, the results of the interviews conducted propose that investigators at the CoT GAR experience shortcomings with regard to efficiently investigate the non-compliance of tender procedures by service providers to reduce tender irregularities within the CoT. Therefore, the research question, namely, *Do investigators efficiently investigate the non-compliance of tender procedures by service providers to reduce tender irregularities within the CoT?* was adequately addressed.

## LIST OF REFERENCES

- Ambe, I.M. & Badenhorst-Weiss, J.A. 2012. Procurement Challenges in the South African Public Sector. *Journal of Transport and Supply Chain Management*, 6 (1): 242-261.
- Andvig, J. & Fjeldstad, O.H. 2001. *Corruption: A review of contemporary research*. Bergen: Chr. Michelsen Institute.
- Australian Health Practitioner Regulatory Agency. 2014. *Conflict of Interest Procedures v1 – RM007*. Fraud and Corruption Control Officer (Manager Corporate Risk and Compliance): Australian Health Practitioner Regulatory Agency.
- Babbie, E., Mouton, J., Vorster, P. & Prozesky, B. 2011. *The practice of social research*. Cape Town: Oxford University Press.
- Bachmann, R., Russel, K. & Schutt, R.K. 2003. *The practice of research in criminology and criminal justice*. New York: Sage.
- Badenhorst, C. 2010. *Research writing*. Pretoria: Van Schaik.
- Baily, P., Farmer, D., Jessop, D. & Jones, D. 2005. *Purchasing principles and management*. (9<sup>th</sup> edn.). Harlow, UK: Prentice Hall.
- Bak, N. 2011. *Completing your thesis*. Pretoria: Van Schaik.
- Birzer, M.L. & Roberson, C. 2012. *Introduction to criminal investigation*. London: CRC Press.
- Bless, C., Higson-Smith, C. & Kagee, A. 1995. *Fundamentals of social research methods*. (2<sup>nd</sup> edn.). Cape Town: Juta.
- Bless, C., Higson-Smith, C. & Kagee, A. 2006. *Fundamentals of social research methods*. (4<sup>th</sup> edn.). Cape Town: Juta.
- Bologna, J. & Shaw, P.D. 1997. *Corporate crime investigation*. Boston: Butterworth-Heinemann.
- Bolt, S. 2011. *XBOX 360 Forensics*. Burlington, MA: Elsevier.
- Bolton, A.P. 2014. Disqualification for non-compliance with public tender conditions. *Potchefstroom Electronic Law Journal*, 17 (6).
- Bordens, K.S. & Abbott, B.B. 2014. *Research design and methods: A process approach* (9<sup>th</sup> edn.). New York: Mc Graw Hill.
- Bracking, S. 2007. *Corruption and development: The anti-corruption campaign*. New York: MacMillan.



- Breakwell, G.M., Hammond, S., Fife-Schaw, C. & Smith, J.A. (Eds.). 2006. *Research methods in psychology*. (3<sup>rd</sup> edn.). London: Sage.
- Britz, M.T. 2013. *Computer forensics and cyber-crime*. Boston: Pearson.
- Burchell, J. & Milton, J. 1997. *Principles of criminal law*. Cape Town: Juta.
- City of Tshwane. 2010. *2009/2010 Annual Report*. CoT Economic Development Agency. Pretoria: City of Tshwane Metropolitan Municipality.
- City of Tshwane. 2011. *CoT Supply Chain Management Policy Amendment Report*. Pretoria: City of Tshwane Metropolitan Municipality. From: <http://www.tshwane.gov.za/Business/Tender%20Related%20Docs/SupplyChainPolicy.pdf> (accessed 12 July 2014).
- City of Tshwane. 2013a. *Anti-fraud and Corruption Implementation Plan for the City of Tshwane*. Pretoria: City of Tshwane Metropolitan Municipality.
- City of Tshwane. 2013b. *Internal Audit Report (2012 to 2013)*. Pretoria: City of Tshwane Metropolitan Municipality.
- City of Tshwane. 2013c. *Report of the Auditor-General to the Gauteng Provincial Legislature and Council on the City of Tshwane Metropolitan Municipality. Report on the Consolidated Financial Statement (2013)*. Auditor-General, Johannesburg, South Africa.
- Corruption Watch Annual Report*. 2013. From: <http://www.corruptionwatch.org.za> (accessed 7 May 2014).
- Dantzker, M.L. & Hunter, R.D. 2006. *Research methods for criminology and criminal justice*. (2<sup>nd</sup> edn.). Burlington, Massachusetts: Jones and Bartlett Publishers.
- Davia, H.R. 2000. *Fraud 101: techniques and strategies for detection*. New York: Wiley.
- Davia, H.R., Coggins, P.C., Wideman, J.C. & Kastantin, J.T. 2000. (2<sup>nd</sup> edn.). *Accountant's guide to fraud detection and control*. New York: Wiley.
- Deloitte & Touche, 2014. *Preventing Procurement Fraud and Corruption*. London: Deloitte Touche Tohmatsu Limited.
- Denscombe, M. 2002. *Ground rules for good research: A 10 point guide for social researchers*. Philadelphia: Open University Press.
- Dunn, D.S. 2013. *The practical researcher*. (3<sup>rd</sup> edn.). New York: Wiley.
- Gbegi, D. 2014. *Forensic accounting skills and techniques in fraud investigation*. Saarbrücken: Lampert Academic Publishing.

- Girard, J.E. 2011. *Criminalistics: Forensic science, crime and terrorism*. (3<sup>rd</sup> edn.). Sudbury: Jones and Barlett Learning.
- Goel, S. 2010. *Digital forensic and cyber-crime*. Albany, New York: Springer.
- Gravetter, F.J. & Forzano, L.B. 2010. *Research methods for the behavioral sciences*. (6<sup>th</sup> edn.). Belmont, CA: Wadsworth.
- Gravetter, F.J. & Forzano, L.B. 2012. *Research methods for the behavioral sciences*. (4<sup>th</sup> edn.). Belmont, CA: Wadsworth.
- Gray, D.E. 2014. *Doing research in the real world*. (3<sup>rd</sup> edn.). London: Sage.
- Heggstad, K., Frøystad, M. & Isaksen, J. 2010. *The basics of integrity in procurement. A guidebook*. Bergen: Chr. Michelsen Institute.
- Hopwood, W.S., Leiner, J.L. & Young, G.R. 2012. *Forensic accounting and fraud examination*. New York: McGraw-Hill.
- Inbau, F. E., Reid, J.E., Buckley, J.P. & Jayne, B.C. 2015. *Criminal interrogations and confessions*. Burlington, MA: Jones and Barlett.
- Kamble, D.R. & Jain, N. 2015. Digital forensic tools: A comparative approach. *International Journal of Advance Research in Science and Engineering*, 4 (2): 1-12.
- Leedy, P.D. & Ormrod, J. E. 2010. *Practical research planning and design*. (9<sup>th</sup> edn.). London: Pearson.
- Machi, L.A. & McEnvoy, B.T. 2012. *The literature review: Six step to success*. (2<sup>nd</sup> edn.). London: Sage.
- Macmillan Dictionary*. 2018. s.v. "favouritism". London: Holtzbrinck Publishing.
- Mantzaris, E. 2014. Public procurement, tendering and corruption. Realities, challenges and tangible solutions. *African Journal of Public Affairs*, 7(2): 67-79.
- Man-wai, T.K. [s.a]. *Investigation of corruption cases*. Visiting expert paper presented at the Eleventh International Training Course on the Criminal Justice Response to Corruption. From: [https://www.unafei.or.jp/publications/pdf/RS\\_No79/No79\\_19VE\\_Man-wai2.pdf](https://www.unafei.or.jp/publications/pdf/RS_No79/No79_19VE_Man-wai2.pdf) (accessed 4 September 2018).
- Marcella, A.J. & Menendez, D. 2008. *Cyber forensics: A field manual for collecting, examining and preserving evidence on computers*. New York: Francis and Taylor.
- Mathee, C.A. 2006. *The potential of internal audit to enhance supply chain management outcomes*. Unpublished Master's Dissertation, University of Stellenbosch: Stellenbosch.

- Matthews, B. & Ross, L. 2010. *Research methods: A practical guide for the social sciences*. London: Pearson.
- Maxfield, M.G. & Babbie, E. 2008. *Research methods for criminal justice and criminology*. (5<sup>th</sup> edn.). Belmont, CA: Thompson Wadsworth.
- McMahon, R.J. 2014. *Practical handbook for professional investigators*. Boca Raton, Florida: CRC Press.
- Mendell, R. L. 2013. *Investigating information based crime*. Springfield: Charles C Thomas Publisher.
- Mouton, J. 2009. *Understanding social research*. Pretoria: Van Schaik.
- Mouton, J. & Marais, H.C. 1996. *Basic concepts in the methodology of social research*. Pretoria: HSRC.
- Mufutau, G.O. & Mojisola, O.V. 2016. Detection and prevention of contract and procurement fraud: Catalyst to organization profitability. *Journal of Business and Management*, 18(1): 9-14.
- Napier, M.R 2010. *Behavior, truth and deception*. Boca Raton, Florida: CRC Press.
- Noaks, L. & Wincup, E. 2004. *Criminological research*. London: Sage.
- Office of Justice Programs. 2008. *Electronic crime scene investigation. A Guide for first responders*. (2<sup>nd</sup> edn.). Washington, DC: National Institute of Justice.
- Organisation for Economic Co-operation and Development (OECD). 2012. *Investigation and prosecution of corruption offences: materials for the training course*. Paris: Secretary-General of the OECD. From: <http://www.oecd.org/corruption/acn/lawenforcement/TrainingManualcorruptionoffences2012EN.pdf> (accessed 4 September 2018).
- Osterburg, J.W & Ward, R.H. 2010. *Criminal investigation. Methods in reconstructing the past*. New Jersey: Library of Congress.
- Palmiotto, M.J. 2013. *Criminal investigation*. Boca Raton, Florida: CRC Press.
- PricewaterhouseCoopers. 2008. *Fraud: A guide to its prevention, detection and investigation*. 2008. Sydney: PricewaterhouseCoopers. From: <https://www.cmi.no/publications/file/861-corruption-a-review-of-contemporary-research.pdf> (accessed 4 September 2018).
- Raacke, J.B and Raacke, J. 2012. *Research methods*. Boston: Pearson.
- Reed, Q. 2008. *Conflicts of interest and how to regulate them*. Bergen: Chr. Michelsen Institute.

- Robertson, J. 2000. *The practice of crime scene investigation*. Boca Raton, Florida: CRC Press.
- Rothstein, B. 2011. *The quality of government*. Chicago: University of Chicago.
- Silverstone, H. & Sheetz, M. 2007. *Forensic accounting and fraud investigation for non-experts*. New Jersey: Wiley.
- Solidarity. 2015. *Corruption crisis in South Africa bigger than Nkandla – Solidarity*. 2015. From: <https://solidariteit.co.za/en/bigger-than-nkandla/> (accessed 9 December 2018).
- Solomon, M. G., Rudolph, K., Tittel, E., Broom, N. & Barrett, D. 2011. *Computer forensics jumpstart*. Indiana: Sybex.
- South Africa. 1977. Criminal Procedure Act No. 51 1977. Pretoria: Government Printer.
- South Africa. 1996. Constitution of the Republic of South Africa 1996. Pretoria: Government Printer.
- South Africa. 1999. Public Finance Management Act No. 29 of 1999. Pretoria: Government Printer.
- South Africa. 2000a. Municipal System Act No. 32 of 2000. Pretoria: Government Printer.
- South Africa. 2000b. Preferential Procurement Policy Framework Act No. 5 of 2000 Pretoria: Government Printer.
- South Africa. 2003. Municipal Finance Management Act No. 56 of 2003. Pretoria: Government Printer.
- South Africa. 2004a. Prevention and Combating of Corrupt Activities Act No. 12 of 2004. Pretoria: Government Printer.
- South Africa. 2004b. Public Audit Act 25 of 2004. Pretoria: Government Printer.
- South Africa. 2010. Government Procurement: General Condition of Contract: National Treasury. Republic of South Africa. Pretoria: Government Printer.
- South Africa. 2014. Public Administration and Management Act No. 11 of 2014. Pretoria: Government Printer.
- South Africa. 2015a. Public Sector Supply Chain Management Review. Auditor-General's Report. Pretoria: Government Printer.
- South Africa. 2015b. Public Sector Supply Chain Review 2015. Pretoria: Government Printer.
- Special Investigating Unit. 2012. From: [http://www.siu.org.za/who\\_we\\_are](http://www.siu.org.za/who_we_are) (accessed 28 June 2014).

- Stock, R.J. & Lambert, M.D. 2009. *Strategic logistics management*. (4<sup>th</sup> edn.). New York: McGraw-Hill.
- Themeli, A.R. 2017. *Exploring the value of computer forensics in the investigation of procurement fraud*. Unpublished Masters Dissertation, University of South Africa (UNISA), Pretoria.
- Van Zyl, D.C. 2006. *Strategic supply chain management by Matatiele Municipality*. Unpublished Masters Dissertation, University of Stellenbosch, Stellenbosch.
- Verhoeven, N. 2011. *Doing research*. (3<sup>rd</sup> edn.). Chicago: Eleven International Publishing.
- Welman, C. Kruger, F. & Mitchell, B. 2005. *Research methodology*. Cape Town: Oxford University Press.
- Welman, C., Kruger, F. & Michell, B. 2011. *Research methodology*. (3<sup>rd</sup> edn.). Cape Town: Oxford University Press.
- Wex *Legal Dictionary*. 2018. s.v. "bribery". New York: Legal Information Institute at the Cornell Law School.
- Willig, C. 2009. *Introducing qualitative research in psychology*. (2<sup>nd</sup> edn.). New York: Mc Graw-Hill.
- Wood, C., Giles, D. & Percy, C. 2012. *Your psychological project handbook*. (2<sup>nd</sup> edn.). England: Pearson.
- Woods, G. & Mantzaris, E. 2012. *Anti-corruption reader*. Anti-Corruption Centre for Education and Research of the University of Stellenbosch, School of Public Leadership, University of Stellenbosch.
- World Bank. 2013. *Fraud and Corruption Awareness Handbook. A Handbook for Civil Servants Involved in Public Procurement*. From: [https://cba.gov.pl/ftp/publikacje/FRAUD\\_AND\\_CORRUPTION\\_AWARENESS\\_HANDBOOK.pdf](https://cba.gov.pl/ftp/publikacje/FRAUD_AND_CORRUPTION_AWARENESS_HANDBOOK.pdf) (accessed 22 August 2018).

## **ADDENDUM A: INTERVIEW SCHEDULE**

1. According to you, what procedures should be followed to procure goods and services as stated in the COT Supply chain management policy, according to the value of the services or goods?
2. According to which policies and legislation do you direct your investigation of tender irregularities, financial misconduct and related matters?
3. Name the type of tender fraud in procurement?
4. According to you, what are the common red-flags of fraud in different stages of tendering process?
5. Do you utilise interviewing as a method to investigate tender irregularities and non-compliance? If not, what are the inhibiting factors for not utilising this method, if affirmative, is this method successful?
6. What general principles should be followed to search and seize computer and other digital-related evidence in the investigation of tender irregularities and non-compliance? Please motivate your answer?
7. According to you, what general principles should be followed when dealing with computer and other digital-related evidence in the investigation of tender irregularities? Please motivate your answer?
8. In your own opinion, what are the procedures to follow during the search and seizure of computer other digital-related evidence in the investigation of tender irregularities? Please motivate your answer?

## ADDENDUM B: UNISA ETHICS APPROVAL



### COLLEGE OF LAW RESEARCH ETHICS REVIEW COMMITTEE

Date: 26/07/2016

Reference: ST 90

Applicant: G. S. Mahlangu

Dear G. S. Mahlangu  
(Supervisor: Prof J van Graan)

#### DECISION: ETHICS APPROVAL

Name	G. S. Mahlangu
Proposal	Examining compliance procedures in the investigation of tender irregularities
Qualification	MTech

Thank you for the application for research ethics clearance by the College of Law Research Ethics Review Committee for the above mentioned research. **Final approval is granted.**

*The application was reviewed in compliance with the Unisa Policy on Research Ethics.*

*The proposed research may now commence with the proviso that:*

1. *The researcher will ensure that the research project adheres to the values and principles expressed in the Unisa Policy on Research Ethics which can be found at the following website:*

[http://www.unisa.ac.za/cmsys/staff/contents/departments/res\\_policies/docs/Policy\\_Research%20Ethics\\_rev%20app%20Council\\_22.06.2012.pdf](http://www.unisa.ac.za/cmsys/staff/contents/departments/res_policies/docs/Policy_Research%20Ethics_rev%20app%20Council_22.06.2012.pdf)

2. *Any adverse circumstances arising in the undertaking of the research project that is relevant to the ethicality of the study, as well as changes in the methodology, should be communicated in writing to the College of Law Ethical Review Committee.*



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Preter Street, Muckleneuk Ridge, City of Tshwane  
PO Box 392, Unisa, 0003, South Africa  
whereas unisa is not a law

*An amended application could be requested if there are substantial changes from the existing proposal, especially if those changes affect any of the study-related risks for the research participants*

3. *The researcher will ensure that the research project adheres to any applicable national legislation, professional codes of conduct, institutional guidelines and scientific standards relevant to the specific field of study.*

**Note:**

*The reference number (top right corner of this communique) should be clearly indicated on all forms of communication (e.g. Webmail, E-mail messages, letters) with the intended research participants, as well as with the URERC.*

Kind regards



PROF B W HAEFELE  
CHAIR PERSON: RESEARCH ETHICS  
REVIEW COMMITTEE  
COLLEGE OF LAW



PROF R SONGCA  
EXECUTIVE DEAN:  
COLLEGE OF LAW



## ADDENDUM C: CITY OF TSHWANE LETTER OF APPROVAL



### Group Audit and Risk Department

Room 07 | 1<sup>st</sup> Floor | Sammy Marks, Galleria Offices | Cnr Madiba and Sisulu Streets | Pretoria | 0002  
PO Box 440 | Pretoria | 0001  
Tel: 012 358 1630 / 012 358 1098 | Fraud Hotline: 080 874 9263  
Email: [Dirangm@tshwane.gov.za](mailto:Dirangm@tshwane.gov.za) | [www.tshwane.gov.za](http://www.tshwane.gov.za) | [www.facebook.com/CityOfTshwane](https://www.facebook.com/CityOfTshwane)

My ref:

Tel: 012 358 2630

Your ref:

Fax:

Contact person: Mr. Dirang  
Modimakwane

Email: [dirangm@tshwane.gov.za](mailto:dirangm@tshwane.gov.za)

Section/Unit: Forensic Investigation

16 November 2018

### MEMORUNDUM

To: Whom it may Concern

From: Mr. Dirang Modimakwane  
Divisional Head: Forensic Services

#### RESEARCH BY MS. GLENDA SAFEDI MAHLANGU

- 1.1 On 27 September 2018 Ms. Glenda Safedi Mahlangu who is a student registered for Magister of Technologiae in Forensic Investigations with the University of South Africa (UNISA) approached the Group Audit and Risk Department ("GAR") with a request to assist her with research work.
- 1.2 Ms. Mahlangu's topic is "Examination the investigation of tender irregularities". The mandate to investigate incidents of fraud and corruption falls under GAR with a dedicated division: The Forensic Services division.
- 1.3 As part of the mandate, the Forensic Services division regularly conducts various investigations including procurement or tender irregularities as per the topic of Ms. Mahlangu.

Yuniti ya Dihlopha tša Tlhakišo le Dikotsi • Departement Groepsoudit en Risiko • Yuniti ya Setheo ya Boruni le Dikotsi  
Ntlawa wa Vukamba-tinkota na Yuniti ya Nxungeto • UMnyango Wezobungozi Nocwaningo Lwesikhungo  
Group Audit and Risk Department

- 1.4 During our deliberations with Ms. Mahlangu, she indicated that her approach would entail conducting interviews with the investigators to gain an understanding of the various investigation techniques used.
- 1.5 GAR asked Ms. Mahlangu to be cautious of the sensitivity nature of investigations and requested her to commit to a non-disclosure clause. The agreement further compels Ms. Mahlangu not to refer or be referred to actual cases and case details handled by GAR. Her research will be based on generic enquiries to be made with the investigators of GAR.
- 1.6 This letter therefore confirms that Ms. Mahlangu has been afforded the permission to conduct her research.



DIRANG MODIMAKWANE  
DIVISIONAL HEAD: FORENSIC SERVICES

## ADDENDUM D: CONFIRMATION OF LANGUAGE EDITING

### **EDITING AND PROOFREADING CERTIFICATE**

7542 Galangal Street

Lotus Gardens

Pretoria

0008

09 January 2019

#### **TO WHOM IT MAY CONCERN**

This certificate serves to confirm that I have edited and proofread Ms GS Mahlangu's dissertation entitled, "**EXAMINING COMPLIANCE PROCEDURES IN THE INVESTIGATION OF TENDER IRREGULARITIES**".

I found the work easy and intriguing to read. Much of my editing basically dealt with obstructionist technical aspects of language, which could have otherwise compromised smooth reading as well as the sense of the information being conveyed. I hope that the work will be found to be of an acceptable standard. I am a member of Professional Editors' Guild.

Hereunder are my particulars:

\_\_\_\_\_  
Jack Chokwe (Mr)

Contact numbers: 072 214 5489

[jackchokwe@gmail.com](mailto:jackchokwe@gmail.com)

Professional  
**EDITORS**  
Guild

